



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1995

Ms. Amy Motes McCullough  
City Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, Texas 77581

OR95-046

Dear Ms. McCullough:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. You assert that the requested information is excepted from required public disclosure by the attorney/client privilege of the Open Records Act, section 552.107 of the Government Code. Your request was assigned ID# 28831.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within 10 days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request.

On October 5, 1994, we returned the documents you submitted and asked you to mark the documents as to what specific portions of the information consist of client confidences and what portions consist of attorney advice or opinion. To date, we have not received the marked documents.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the marked documents, this office is unable to evaluate the exception you raised. Consequently, we find that you have not met your burden under sections 552.301 - .303 of the act and that the information is presumed to be public.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Rebecca Payne", is written over the typed name.

Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/sbm

Ref.: ID# 28831

cc: Ms. Daphne Hereford  
Heritage Manor  
2904 Yost Boulevard  
Pearland, Texas 77581